.. IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5995 OF 2004

Shri Balu Hari Walimbe & Ors. .. Petitioners

Versus

Project Officer, Integrated
Tribal Development Project & Ors.. Respondents

Mr.P.M.Pradhan with Mr.A.R.Pitale for the petitioners

Mr.V.P.Malvankar, A.G.P. for respondents

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 15TH SEPTEMBER, 2004

P.C.:

1. Heard advocates.

2. Petitioners who were employed on temporary basis in Ashram Shalas and Hostels challenged their termination by raising an industrial Disputes under the Industrial Disputes Act, 1947. The Assistant Commissioner of Labour refused to intervene in the matter on the ground that Hostels and Schools do not fall within the definition of "Industry". In

Writ Petition No.1477 of 2000 this court directed the Assistant Commissioner of Labour to refer the dispute for adjudication to the Labour Court.

3. The Labour Court by its award dated 21st April 2003 has ruled both on the maintainability as well as on merits. In so far as the question of maintainability is concerned, the Labour Court held that the Integrated Tribal Development Project, Dahanu which runs and conducts Ashram Schools under the Tribal Development Department is not an Industry within the meaning of Industrial Disputes Act, 1947. On merits, the Labour Court was of the view that the workmen in question whose cause is being espoused by the Union, were not entitled to any relief. The Labour Court held that the appointment letters of the workmen were on record and this showed that the appointments were purely on temporary basis and the Government can terminate the services of the workmen without prior notice.

4. The award of the Labour Court was challenged before the learned single Judge (Chandrachud, J.)

in Writ Petition No.5262 of 2003. The learned single Judge dismissed the Writ Petition with the following observations:

> "The workmen were engaged on a temporary basis for a period of three months. Their names were not recommended by the Employment Exchange. These were not regular appointments but obviously temporary appointments made without following the prescribed procedure. Upon the termination of their services, the workman could clearly not be entitled to continue, having regard to the provisions of Section 2(oo) (bb) of the Industrial Disputes Act, 1947.
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> Learned counsel appearing on behalf of the petitioner, however, urged that in the course of the Examination-in-Chief, it has been stated that the workmen had completed 240 days of service. A mere statement to that effect would not entitle the petitioner or the concerned workmen to relief having regard to the recent judgment of the Supreme Court in Range Forest Officer Vs. S.T.Hadimani 2002 I CLR 922. In that case, Mr.Justice B.N.Kripal (as the Learned Chief Justice then was) speaking for a Bench of two Learned Judges of the Supreme Court held thus:
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> "In our opinion, the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence

> to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."
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> In that case also, the Supreme Court had held that the workmen were not entitled to relief and therefore it was not necessary to go into the question as to whether the establishment in which they are working was an "industry" within the meaning of Section 2(j) of the Act. Having regard to the aforesaid judgment of the Supreme Court, the interference of this Court in the conclusion which has been arrived at by the Labour Court is not warranted. The writ petition is accordingly dismissed."

5. The workmen thereafter filed a Complaint under the MRTU and PULP Act, 1971 before the Industrial Court. The Industrial Court dismissed the complaint and writ petition filed challenging the order of the Industrial Court was also withdrawn. Consequently, the services of the petitioners came to be terminated.

6. By the present petition the petitioners are

seeking to quash and set aside the termination order. In view of the decision of Chandrachud, J it is not possible to accept the prayers of the petitioners. Chandrachud J. has categorically held that the appointment of the workmen were not regular appointment and were made on temporary basis without following the procedure and workmen are not entitled to continue upon termination of their appointment. These findings operate as res-judicata and it is not open for the petitioners to reagitate the same issues again and again. We therefore, dismiss the petition in limine. However, we make it clear that in case the petitioners or any of them apply for the posts in question their applications will be considered on merits by relaxing the age bar. Writ Petition is disposed of accordingly.